

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

- - - - - x
:
UNITED STATES OF AMERICA :
:
v. : Criminal No. 19-00096-GJH
:
CHRISTOPHER PAUL HASSON, :
:
Defendant. :
:
- - - - - x April 25, 2019

Greenbelt, Maryland

BAIL REVIEW HEARING

BEFORE: THE MAGISTRATE JUDGE CHARLES B. DAY

APPEARANCES: THOMAS P. WINDOM, Esq.
Office of the United States Attorney
6500 Cherrywood Lane
Greenbelt, Maryland 20770

ELIZABETH G. OYER, Esq.
Office of the Federal Public Defender
100 S. Charles Street
Suite 900, Tower II
Baltimore, Maryland 21201

Audio Operator: Tahshia Singletary

Transcription Company: CompuScribe
P.O. Box 789
Cheltenham, Maryland 20623-9998
(301) 577-5882

Proceeding recorded by electronic sound recording, transcript
produced by transcription service.

feb

2

I N D E XPage

Comments by Elizabeth Oyer, Esq.
On Behalf of the Defendant

4

Comments by Thomas Windom, Esq.
On Behalf of the Government

28

Rebuttal by Elizabeth Oyer, Esq.

38

Ruling - Judge Day

40

EXHIBITSFOR IDENTIFICATIONIN EVIDENCE

For the Government:

1

30

30

KEYNOTE: "*" indicates phonetically spelled in transcript.

feb

3

1 P R O C E E D I N G S

2 (Whereupon, at 2:00 p.m., the hearing began.)

3 THE CLERK: The United States District Court for the
4 District of Maryland is now in session, the Honorable Charles
5 B. Day presiding.

6 THE COURT: Good afternoon. Please be seated.

7 (Chorus of "Good Afternoon.")

8 THE CLERK: Calling the Case of the United States
9 versus Christopher Paul Hasson, Criminal Action GJH19-096.
10 The matter now comes before the Court for a bail review
11 hearing. Counsel, please identify yourselves for the record.

12 MR. WINDOM: Good afternoon, Your Honor. Thomas
13 Windom, for the United States. With me at counsel table is
14 FBI Special Agent Thoman.

15 THE COURT: Good afternoon. Welcome.

16 MS. OYER: Good afternoon, Your Honor. Liz Oyer,
17 Assistant Federal Public Defender, for Christopher Hasson, who
18 is present to my left.

19 THE COURT: Good afternoon. And welcome, sir. Give
20 me a moment, please.

21 (Pause)

22 THE COURT: Okay. I have received the letter
23 request from the Defense seeking bail review. I have reviewed
24 that, as well as the Government's opposition thereto, and
25 there have been some additional submissions from the Defense

feb

4

1 with respect to, I guess, proceedings in other cases and other
2 jurisdictions, as well as a submission from a relative of
3 Mr. Hasson with respect to conditions of release.

4 With that being said, it is the Defendant's request.
5 So I will hear first from the Defense.

6 MS. OYER: Thank you, Your Honor.

7 Your Honor, I fear that through the vivid
8 imaginations and colorful writing of these prosecutors this
9 case has developed a profile that simply does not match up
10 with the facts. The rhetoric in this case has gotten ahead of
11 the facts and in some instances has even been contradictory to
12 the facts.

13 And so what I would like to do today, Your Honor, is
14 to focus on the facts, and I want to begin by looking at some
15 of the representations that were made at the last hearing
16 before Your Honor, which took place on February the 21st, just
17 over two months ago.

18 Your Honor, at the last detention hearing in this
19 case the Government made two rather sweeping representations.
20 The first was that they had evidence that the Defendant is a
21 domestic terrorist. Those are the words they used.

22 And the second is they claimed that the firearms
23 charges that they brought were, in their words, "just the tip
24 of the iceberg." Again, that is a direct quote.

25 Now the Court at the initial hearing credited the

feb

5

1 Government's proffer on those points, and the Court ordered
2 Lieutenant Hasson detained. But the Court also gave the
3 Government a timeframe to back up their assertions, and it
4 invited the Defense to come back if the Government failed to
5 do so.

6 We are back before Your Honor today because the
7 Government has failed to deliver. They have not come forward
8 with evidence that Lieutenant Hasson is a domestic terrorist
9 because he is not.

10 Your Honor, during the past two months since we were
11 last before this Court the Government has continued to
12 investigate, and the only additional charges that have
13 resulted from their continued investigation are two alleged
14 violations of licensing and registration provisions of the
15 National Firearms Act.

16 The indictment returned on February the 27th added
17 those two charges to the original two charges in the
18 complaint. A firearms charge and a misdemeanor drug
19 possession offense.

20 We had a status call with Judge Hazel, the presiding
21 District Court judge, on April the 3rd, and during that call
22 the Government represented that they do not at this point
23 intend to supersede. Essentially they have represented to the
24 Court that no domestic terrorism charges are coming.

25 Now, Your Honor, the Government made a filing

feb

6

1 earlier this week, on Tuesday, that contained some additional
2 bits and pieces of evidence that they have uncovered, but
3 there is still not evidence that Lieutenant Hasson had any
4 plan to commit any actual attack.

5 Eight weeks ago, Your Honor, before this Court the
6 Government proffered that Lieutenant Hasson was planning a
7 mass attack on civilians. The words that were used were, "He
8 was planning a murder on a scale rarely seen in this country."

9 Now the theory has shifted a little bit in their
10 most recent filing. In their most recent filing they say that
11 he is planning a "quiet murder aided by a silencer." Either
12 way, the details of this supposed plan that he has hatched are
13 all missing.

14 What was he planning to do? When was he planning to
15 do it? Where was he planning to do it? How was he planning
16 to carry out this plan? All of these questions are unanswered
17 because there was no plan.

18 This case has been investigated exhaustively at this
19 point, Your Honor. Now I want to be clear. They didn't start
20 investigating Lieutenant Hasson just when they arrested him in
21 February. Extensive investigation was done in the months
22 preceding his arrest. And the discovery that has been
23 produced to date has shed some light on what type of
24 investigation was done, and I want to review that with the
25 Court.

feb

7

1 Now in November last year the Coast Guard's
2 Investigative Service flagged Lieutenant Hasson's computer use
3 on his work computer. And as a result of that, the Coast
4 Guard started monitoring Lieutenant Hasson's ongoing computer
5 use in real time.

6 They also started doing historical research. They
7 dug into all of his past computer use over the two years that
8 he had been at the Coast Guard and reviewed that. They
9 started reporting back their findings to the FBI.

10 In addition, they started conducting video
11 surveillance of Lieutenant Hasson's work space at the Coast
12 Guard. A camera was placed right at his desk. In January of
13 2019 law enforcement then started conducting physical and
14 video surveillance of Lieutenant Hasson's residence in Silver
15 Spring, Maryland. This included installing a pole camera
16 outside his home. There are hundreds of hours of video
17 footage that were captured.

18 Search warrants were also issued in January for two
19 email accounts that were used by Lieutenant Hasson, as well as
20 a search warrant for cell site location data so that they
21 could track his cell phone. Also, a tracking device was
22 placed on his vehicle, on his Subaru car.

23 So, Your Honor, since that time, since at least
24 January and to some extent back to November of last year, they
25 have had eyes on him at all times. Since those initial search

feb

8

1 warrants were issued they have gotten search warrants for more
2 email accounts associated with Lieutenant Hasson, for email
3 accounts of two individuals that he corresponded with, they
4 have got search warrants that were executed on the day of his
5 arrest, for his home in Silver Spring, for his vehicle, and
6 also, to take a sample of his blood.

7 So the investigation that has been done prior to the
8 date of his arrest on February 15th was extensive. Now since
9 his arrest two and a half months ago they have continued to
10 investigate. Now they have reviewed his personal electronic
11 devices, which were seized from his home. This included a
12 cell phone and tablet.

13 They have analyzed all the evidence that was seized
14 during the search of his home. They have conducted ballistics
15 analysis, laboratory analysis. They have interviewed people
16 in all parts of the country who have known Lieutenant Hasson
17 during various stages of his life.

18 They have had multiple law enforcement agencies
19 continuing to investigate and all this investigation has
20 yielded, Your Honor, is the four charges in the February 27th
21 indictment. The original firearms charge, the misdemeanor
22 drug possession offense and two additional firearm charges.
23 No terrorism charges, no murder charges, no attempted murder,
24 no conspiracy to commit murder or terrorism. None of the
25 types of charges that you would expect to see based on the

feb

9

1 representations that were published in the brief that the
2 Government filed seeking Mr. Hasson's detention two and a half
3 months ago.

4 But despite all of this, Your Honor, the Government
5 persists in arguing that Lieutenant Hasson is planning some
6 sort of terrorist attack. The charges don't reflect that.
7 The evidence doesn't reflect that.

8 Essentially what the Government has here is a lot of
9 dots on a page, and they are trying mightily to connect those
10 dots into a sinister picture, but the dots just don't connect.
11 The picture is not there. So I want to go through some of
12 these dots, and I am going to ask the Court to look closely at
13 each of these dots that the Government has put on paper hoping
14 that they will connect into this picture of terrorism.

15 The first one, Your Honor, is Lieutenant Hasson's
16 firearm collection. Now the Government has created this
17 artfully staged photograph that has been widely reprinted by
18 the media showing all the firearms that were seized from the
19 residence, but let's put a little bit of context around this
20 staged photograph.

21 Lieutenant Hasson is a 30-year military veteran. He
22 has always owned guns. He has bought and sold different guns
23 at different times throughout his life lawfully. He has used
24 them recreationally for hunting and for target practice. He
25 even had an informal shooting range at his home in North

feb

10

1 Carolina. The Government is no doubt aware of all of this
2 through its extensive investigation.

3 Lieutenant Hasson's firearms collection, the one in
4 this staged photograph, it may be unusual here in the
5 Washington, D.C. suburbs, but it is not unusual where
6 Lieutenant Hasson came from. Keep in mind he only moved to
7 the D.C. area in 2016 for his new post with the Coast Guard.
8 Previously he lived for years in North Carolina with his wife
9 and his children where they owned a home, and the cultural
10 norms there, Your Honor, are simply different.

11 In many parts of this country, and in many circles,
12 the firearm collection that the Government has seized from
13 Lieutenant Hasson's home would be considered unremarkable.
14 But there is this sort of cultural bias that is infusing the
15 Government's arguments here.

16 Now the Government's most recent filing makes a lot
17 out of the addition of these silencer charges. The Government
18 states, in their most recent filing, that silencers, and this
19 is a quote, "serve one purpose, to murder quietly."

20 Well, with all due respect, with respect to these
21 AUSAs handling this case, that statement is just ignorant of
22 the facts. Your Honor, first of all, as anyone with any
23 knowledge of firearms would tell you, the term silencer is
24 something of a misnomer because the device really only
25 fractionally reduces the noise that the gun makes when it

feb

11

1 fires. So it doesn't make the gun silent.

2 In fact, it doesn't even really make it that quiet.
3 Science shows that, depending on the type of firearm, it
4 shoots with a silencer at about 120 to 130 decibels. Now,
5 Your Honor, that is associated with the sound that an
6 ambulance siren makes or the sound that a jackhammer makes.
7 Those are common comparisons that people use to describe how
8 loud a gun is when it fires with a silencer attached.

9 So that is not really that great of an aide in
10 committing a quiet murder. And as a result, silencers in fact
11 are not used very often in murders. Anyone who thinks they
12 are going to be able to murder somebody quietly like in the
13 movies using a silencer just doesn't know anything about what
14 the device actually does. They are very rarely used for that
15 purpose.

16 Now the second thing that the Government has wrong,
17 this assertion that they are only used for murders, is this,
18 Your Honor. Among hunters and sport shooters silencers are
19 widely regarded as serving the important purpose of providing
20 hearing protection. They are used by many sport shooters, in
21 addition to those earmuffs that you see them wearing, to
22 provide an additional layer of protection for the shooter's
23 hearing.

24 And because of this important application in
25 protecting hearing, the regulation of silencers is actually

feb

12

1 very controversial. There is legislation, Your Honor, pending
2 right now in the U.S. Senate that is called the Hearing
3 Protection Act, and that act would significantly deregulate
4 silencers. That act is cosponsored by 13 United States
5 senators, all of whom agree that silencers should be more
6 readily available.

7 And just to be clear, Your Honor, silencers can be
8 obtained lawfully now, and many people own them. There is
9 just a complex and costly licensing process to go through to
10 get one, which does discourage some gun owners from acquiring
11 them or from doing so through lawful channels.

12 But, Your Honor, the ATF maintains statistics
13 regarding the lawfully registered silencers in the United
14 States, and the ATF publishes these statistics every year. I
15 am just going to display an example of these reports that the
16 ATF publishes on the screen.

17 The most recent one is from 2018, and those
18 statistics say that as of 2018, 1,489,791 people had lawfully
19 registered silencers in the United States. Now are all of
20 them planning to commit murder quietly? I doubt it.

21 The statistics from just two years earlier, Your
22 Honor, in 2016, state that in that year 902,805 people
23 lawfully owned silencers in the United States. So there has
24 been quite a jump over the last couple of years in the
25 interest and popularity of these devices, and for that reason,

feb

13

1 among others, some officials at the ATF, the agency that
2 regulates these devices, has suggested that they should be
3 deregulated.

4 And I want to show Your Honor another document.
5 This is a White Paper that was drafted by Ronald Turk*, who
6 was then the number two official at the ATF. This was drafted
7 in 2017. And this report, written by a high-ranking official
8 at the ATF, suggests that silencers are completely
9 misunderstood and should be deregulated. And I just want to
10 read Your Honor an excerpt from this report.

11 (Pause)

12 MS. OYER: Your Honor, this White Paper, on page six
13 states -- and I am not going to read the whole thing, but it
14 states, "In the past several years opinions about silencers
15 have changed across the United States. They are used to
16 reduce noise at shooting ranges and applications within the
17 sporting and hunting industry are now well recognized."

18 It goes on to say that 42 states generally allow
19 silencers to be used for sporting purposes, and it goes on to
20 describe the substantial surge in demand over the last several
21 years for these types of devices. It goes on to explain that
22 the ATF's processing time for licenses for silencers has
23 significantly slowed, to the point where it takes
24 approximately eight months to get a license for one of these
25 devices.

feb

14

1 This has resulted in complaints to Congress and
2 requests to speed up the process, and now it is perhaps that
3 what is appropriate at this point is to deregulate these
4 entirely. Or not entirely, but to take them off of the
5 National Firearms Act list of regulated weapons.

6 The report states, "The change in public acceptance
7 of silencers arguably indicates that the reason for their
8 inclusion in the NFA is archaic and historical reluctance to
9 removing them from the NFA should be evaluated." The NFA is
10 the National Firearms Act, which is the same statute that
11 Lieutenant Hasson is charged under in these two silencer
12 counts.

13 It goes on to state in this report that "silencers
14 are very rarely used in criminal shootings, and given the lack
15 of criminality associated with silencers, it is reasonable to
16 conclude that they should not be viewed as a threat to public
17 safety necessitating the NFA classification."

18 So, Your Honor, the point that I am trying to make
19 with that longwinded presentation is that the facts just don't
20 support the Government's theory. They are making sweeping
21 assertions in their public filings in this case that are not
22 supported by fact, and the assertion that the only purpose for
23 a silencer is to murder someone quietly is counterfactual.

24 Now, Your Honor, the next thing that the Government
25 has highlighted, the next dot that they have put on paper that

feb

15

1 they are trying to connect, is some of Lieutenant Hasson's
2 reading habits, and they have made much out of the fact that
3 he was reading manifestos written by individuals like Anders
4 Breivik, who committed a mass shooting in Norway in 2011.

5 Their last filing in this case, their motion for
6 detention, talked extensively about Breivik. Now Lieutenant
7 Hasson had apparently downloaded Breivik's manifesto onto his
8 Coast Guard computer and was reading from it at work. So
9 let's try to put that in perspective too.

10 Breivik's 1,500 page manifesto is readily available
11 on the internet. It can be downloaded for free. It is not
12 hard to find. It is available on multiple sites. Sections of
13 this manifesto have been reprinted and published by mainstream
14 news outlets, including *Reuters*, the *BBC News* and others.

15 And, Your Honor, *The Washington Post*, which is
16 regarded by some as a liberal news outlet, offers a link to
17 the full text of the manifesto on its website.

18 Now many people of all persuasions are interested in
19 this stuff. Sadly perhaps, these sorts of grim tales of mass
20 shootings and serial killers have cemented a place for
21 themselves in our popular culture. In fact, Your Honor,
22 Anders Breivik, the Norwegian shooter, he is the subject of a
23 Hollywood movie, a critically acclaimed Hollywood movie that
24 was released in 2018.

25 It was made by the director who directed the Jason

feb

16

1 Bourne series of movies starring Matt Damon. So this is a pop
2 culture interest that they are pointing to here.

3 And I think, Your Honor, that we need to dig deep
4 here and ask why it doesn't even raise an eyebrow when the
5 Washington Post publishes a link to this manifesto or when a
6 Hollywood director makes a movie about it, but it raises a
7 code red when somebody like Lieutenant Hasson reads it.

8 Again, Your Honor, there is some political bias
9 baked in here that should not carry the day in this courtroom.

10 THE COURT: Let me slow you down. I certainly do
11 want to hear the rest of argument. But surely, you are not
12 reducing this discussion to something simply as a man reading
13 a manifesto?

14 MS. OYER: Your Honor, I think the Government's
15 theory is that Lieutenant Hasson is trying to follow
16 instructions by Breivik in his manifesto, and there is simply
17 no evidence that supports that. And I want to give an example
18 of that. One of the things I want to talk about is this idea
19 of steroid use.

20 THE COURT: Well, this is exactly what would be
21 helpful to me, in terms of attacking the Government's
22 association of conduct and his reading. But to merely reduce
23 it to talk about a manifesto being available to the public and
24 that being the sole reason why the Government has made its
25 argument I think is a little thin.

feb

17

1 MS. OYER: Your Honor, I don't think that the
2 Government has pointed to anything that Lieutenant Hasson was
3 doing that actually indicates that he was following any
4 instructions set out by Breivik in this manifesto, and the
5 steroid use is an example of how they have sort of got it
6 wrong.

7 They suggest that Lieutenant Hasson was reading
8 about steroids in the manifesto and was using steroids to try
9 to gear up to commit some sort of attack.

10 THE COURT: It is not just steroids. That was not
11 the sole basis of their argument. There were layers of things
12 involved. I am going to certainly give you an opportunity to
13 talk about the steroids, but again, it is not simplistic
14 either.

15 So feel free to make good argument with respect to
16 steroids and/or money and/or investments in properties and all
17 the other things that the Government went through great
18 efforts to lay out before.

19 MS. OYER: Yes. Well, Your Honor, regarding the
20 steroids, I will start there. The Government has suggested
21 that he was using steroids to follow this plan by Breivik.
22 Now the Government did a drug test when they arrested him.
23 They took a blood sample.

24 They tested him for narcotics and for controlled
25 substances, for a wide array of them, and as far as I can see,

feb

18

1 as far as what has been provided to me in discovery, the only
2 controlled substance that his blood work tested positive for
3 was Tramadol, this substance that he is charged with
4 possessing unlawfully. No steroids.

5 The lab work does not show that he was using
6 steroids, and the Government doesn't have any evidence that he
7 was actively using them at that time. There may have been
8 times in the past where he used steroids, and it is very
9 common in the military. It is common in a lot of different --
10 you know, in bodybuilders. There are a lot of populations
11 that use steroids for reasons that are completely unrelated to
12 terrorism.

13 And I think that there may have been reasons in the
14 past, but there is no evidence that Lieutenant Hasson was
15 using steroids at the time that he was arrested, at or around
16 the time that he was arrested, or that his use of steroids had
17 anything -- in the past, in the distant past, had anything to
18 do with what Anders Breivik had written in this manifesto.

19 So, Your Honor, he may have been using them before,
20 but he wasn't using them at the relevant timeframe, which is
21 the timeframe when he was arrested, because the Government
22 said he was planning this terrorist attack. It is a lot of
23 speculation, and it is a lot of connecting together of dots
24 that don't actually form a picture.

25 The only controlled substance that they have

feb

19

1 evidence that he was using is Tramadol. Tramadol is a
2 Schedule 4 narcotic. It is on the same schedule as Xanax and
3 Ambien and Valium and other fairly commonly used controlled
4 substances, and there is nothing about Tramadol in Breivik's
5 manifesto.

6 The facts just don't support the theory. This is a
7 person with a lifelong interest in firearms. This is a person
8 with a military background. This is a person who had an array
9 of interests and may have been reading this manifesto. But
10 everyone who reads it is not planning an attack, and I don't
11 see the dots leading toward any sort of plan in this case.

12 THE COURT: Was there not a discussion in the
13 manifesto with respect to hard targets and soft targets? Was
14 there not other materials that the Government relied upon to
15 support its theory, whether I accept it or not, whether you
16 knock it down or not?

17 MS. OYER: Yes. I do want to talk about the other
18 specified materials that the Government relies on. I want to
19 talk about his writings, the things that the Government quoted
20 from extensively at the last hearing and in their initial
21 detention motion.

22 They cite two documents that were apparently drafted
23 on the work computer in 2017. So approximately a year and a
24 half ago. And those documents were private writings. They
25 weren't shared with anybody. They weren't posted online. At

feb

20

1 least one of them was deleted and they were his private
2 thoughts that were written down, and that is a long ways off
3 from planning a terrorist attack.

4 There was no plan. It was simply a private writing
5 that was shared with no one. If it had been shared, you can
6 be sure that the Government would have the emails or other
7 documentation reflecting that it was shared.

8 But instead, one of them at least, and perhaps both
9 of them, I am not sure, was recovered from deleted documents
10 on Lieutenant Hasson's computer. So these are private
11 thoughts at best, and there is no indication of any planning
12 of any type of coordinated attacked. Your Honor, if you can
13 be held in jail simply for writing down your thoughts, then
14 our society really is becoming a scary place.

15 They also point to some computer activity, and some
16 of it is more recent than those writings. He did some
17 internet searches that have been discussed in their filings,
18 some from his work computer. Many of these were done during
19 the recent government shutdown when many federal workers were
20 sitting idle in their offices and unpaid.

21 And one of the things he did was he typed out some
22 names of liberal politicians and journalists, and in some
23 cases he used derogatory epithets to describe them.

24 Now, Your Honor, the Government wants to attach the
25 most sinister possible connotation to this list. They want to

feb

21

1 call it a target list. To me, frankly, Your Honor, this looks
2 like the sort of list that our Commander and Chief might have
3 compiled while watching Fox News in the morning. It looks
4 like he is planning his tweets for the day.

5 Is some of the language used offensive? Yes. And
6 is it legitimately frustrating that offensive language and
7 ideology has now become part of our national vocabulary?
8 Yes, it is very frustrating.

9 But let's pump the brakes for a second before we
10 jump to the conclusion that this is some sort of hit list.
11 There is no factual support for that conclusion, and really,
12 it is hard to differentiate it from the random musings of
13 someone like Donald Trump who uses similar epithets in his
14 everyday language and tweets.

15 Your Honor, certainly nobody would fault the Coast
16 Guard and the FBI for investigating this case as they did.
17 They did so diligently and they did so thoroughly, and they
18 got to the bottom of it. Their investigation revealed the
19 absence of any plan by Lieutenant Hasson to cause anyone harm,
20 and now that it is clear that there was no plan, it is time to
21 deescalate this situation.

22 Your Honor, what we are seeing here is the problem
23 of confirmation bias, which frankly, is not a new problem in
24 law enforcement. What happens is the Government pours a ton
25 of time and resources into an investigation, and it is only

feb

22

1 natural that when it is done they want it to amount to
2 something big.

3 They want to be able to say, look, we caught a
4 domestic terrorist before he attacked. So they are putting
5 the pieces together in a way that fits this appealing
6 narrative. But if we take a step back and look at all the
7 pieces with fresh eyes, the picture is just not there. The
8 dots don't connect.

9 Lieutenant Hasson is not a domestic terrorist, and
10 he was not planning an attack. Your Honor, the Government has
11 had a ton of time at this point to marshal the facts, and they
12 have done a ton of investigation and the facts just don't
13 support their theory.

14 And I want to ask the Court not to lose sight of
15 Lieutenant Hasson's background and history. He is 50 years
16 old as of yesterday. He has a 30-year record of honorable
17 military service. He has a strong and supportive family. His
18 wife is present in court today. He has got two children with
19 whom he is close.

20 He has parents who support him who live in Arizona.
21 He has a brother who is very supportive of him and who wrote a
22 letter to this Court expressing his support and his
23 willingness to serve as a third party custodian if Lieutenant
24 Hasson is released. Lieutenant Hasson has no criminal
25 history. He has no history of violence.

feb

23

1 The Government's most recent filing dredges up an
2 incident from 1995. That was nearly 25 years ago. And
3 honestly, Your Honor, I am not sure what the significance of
4 this incident is. It appears, from what they filed, that
5 Lieutenant Hasson was present when a violent incident
6 occurred. He didn't commit the attack. He wasn't charged
7 with anything. He wasn't arrested.

8 Dredging up this incident from 25 years ago is a way
9 to tarnish his otherwise upstanding reputation. It seems like
10 grasping at straws. It is another dot that doesn't connect to
11 anything.

12 Your Honor, Lieutenant Hasson may have interests
13 that are not common in the D.C. suburbs, he may hold
14 viewpoints that many of us here in this courtroom would
15 condemn, but the right to express one's viewpoints freely in
16 private writings and thoughts is a shared value that we all
17 hold dear. We don't punish people for thinking thoughts or
18 for expressing ideas in writing, no matter how outlandish or
19 offensive they may seem.

20 This is a case in which we need to remove our
21 political lenses and focus on the actual actions taken by
22 Lieutenant Hasson, and in this case they don't support
23 detention. They don't show that he was planning a domestic
24 terrorist attack.

25 I want to just discuss briefly the applicable legal

feb

24

1 standard. Under the Bail Reform Act it is the Government's
2 burden to prove that Lieutenant Hasson should be detained.
3 The Bail Reform Act creates, in this case, a presumption in
4 favor of release, and it directs the Court to fashion the
5 least restrictive set of conditions that will reasonably
6 assure that Lieutenant Hasson is not a danger to the
7 community.

8 To order him detained the Government must prove that
9 there are no conditions that will reasonably assure that he is
10 not a danger to the community, and that is not the case here
11 in this case, Your Honor.

12 I want to cite as examples for the Court two recent
13 cases in which defendants who engaged in conduct that was much
14 more specific and targeted were released on conditions. Those
15 are the Kluss* case and the Chain case that were cited in the
16 letter that I filed with the Court yesterday evening. One was
17 from Southern Florida, and the other was from the Central
18 District of California, as well as the District of
19 Massachusetts.

20 And in those cases the defendants are alleged to
21 have made targeted threats to cause bodily harm to other
22 individuals. One in one case to members of congress, and in
23 the other case to journalists. The language that was used in
24 those cases was graphic and offensive. It reflected extremist
25 viewpoints that are similar to what the Government is accusing

feb

25

1 Lieutenant Hasson of holding here, and in both of those cases
2 the defendants owned firearms. In one case the defendant had
3 one in his backpack when he was arrested.

4 Both of those defendants were released on
5 conditions. The conditions included cash bonds and travel
6 restrictions and firearms restrictions and location
7 monitoring, and those were cases that involved much more
8 specific and targeted action than anything the Government has
9 been able to identify here.

10 THE COURT: Well, I applaud your effort and your
11 research on that. I suspect, if the Government wanted to look
12 in that direction, they too would cast out not only two but
13 legions of instances where detention was very much the result.
14 I am not getting much guidance, if you will, from these other
15 jurisdictions.

16 I applaud the effort, but my ruling here will be
17 based upon the resident facts here and whether or not they
18 connect the dots, as you say, and make a picture that is
19 worthy of detention, with the burden being upon the Government
20 or not. And the dynamic was really laid out clearly in our
21 last time together on this case.

22 MS. OYER: Your Honor, I understand that precedent
23 in this context has limited value because every case is so
24 fact specific. But what I am encouraging the Court to do is
25 to look past the way some of these allegations have been

feb

26

1 characterized and focus on what specific instances of conduct
2 show that Lieutenant Hasson is a danger to the community and
3 show that he is so dangerous that release conditions can't be
4 fashioned in this case.

5 THE COURT: I agree with you.

6 MS. OYER: And in this case we have Lieutenant
7 Hasson's brother, who also has an honorable career of military
8 service, who stated in his letter that he does not agree with
9 the viewpoints that his brother is alleged to have held, and
10 he does not agree with the things that he is alleged to have
11 said and written, who is willing to serve as a third party
12 custodian in this case.

13 His wife is also very supportive of him, and she is
14 present in court today. He has got a strong and supportive
15 family network. He has got nothing in his history that
16 suggests that he was on the path toward committing some sort
17 of attack. On the contrary. He served honorably in the
18 military.

19 And his brother discusses very eloquently how
20 remarkable it was that he came up from an enlisted man to a
21 commissioned officer without even a bachelor's degree. He was
22 very good at his job. He was a loyal servant of this country.
23 He is a dedicated family man. He is a father to two children
24 with whom he has nice relationships, and he has not done
25 anything at any point in his life that suggests that he was on

feb

27

1 this path towards violence that the Government is claiming.

2 I think, Your Honor, that there are release
3 conditions that can be set for somebody like this, and that we
4 should try hard to find those release conditions. I will note
5 that Lieutenant Hasson, up until today, has been held
6 essentially on this almost solitary confinement, like status
7 of the jail, where he is not allowed to come out of his cell
8 when anyone else comes out because he is perceived to be
9 unable to associate with others.

10 He has got a cell mate, but he was doing all of his
11 recreation time alone, and the jail has changed that, after
12 our repeated requests, today. But it has been very difficult
13 confinement conditions for him. The issue is he gets along
14 with everybody, but he is perceived as something that he is
15 not as a result of how this case has been portrayed in the
16 media.

17 I think this is a case, Your Honor, in which a third
18 party custodian and location monitoring confining him to the
19 residence would be good places to start. I think there are
20 additional conditions that can be imposed that would mitigate
21 any risks that he might pose, including a restriction on
22 owning or possessing any firearms, a restriction on using any
23 controlled substances and a restriction on computer use.

24 He doesn't need to use a computer or the internet,
25 and if he is locked up at home on location monitoring under

feb

28

1 the supervision of his brother, who agreed to take that on, or
2 his wife, there is no reason to believe that he would pose any
3 threat to the community during the pendency of this case. And
4 the Bail Reform Act suggests that the burden is on the
5 Government to prove otherwise.

6 And unless the Court has any questions for me, I
7 think I will sit down. Thank you.

8 THE COURT: Okay. Thank you. I will hear from the
9 Government.

10 MR. WINDOM: Thank you, Your Honor. Your Honor, as
11 you already heard much of the Defendant from the filings the
12 Government has made in this case and from the last detention
13 hearing, I am going to focus my discussion on the factors
14 under 3142 that are relevant for Your Honor, noting that Your
15 Honor already has found those factors met and that the
16 Defendant is a danger to the community by clear and convincing
17 evidence.

18 So the Defendant has been charged by indictment to
19 four counts. Two silencer counts, the gun counts for being an
20 unlawful possessor of firearms as a drug user or addict, and
21 then the drug count. The statutory maximum for those four
22 counts combined is 31 years. The Defense is asking us to put
23 more charges that provide more statutory maximum possibilities
24 than the 31 years.

25 In the last hearing Your Honor said certain things

feb

29

1 about coming back to the Court, which were quoted by the
2 Defense. But Your Honor also said -- made some comments along
3 the lines of this is all about the Defendant's state of mind
4 and intentions. He had a lot of weapons, most of which do not
5 appear to be hunting weapons, but I cannot say that his
6 possession of those weapons is otherwise illegal.

7 Enter the indictment. The silencers that he made
8 himself clandestinely in his home with a drill press are
9 purely illegal. They have the intended use that the
10 Government said in its papers. He intended to use them in a
11 sniper attack.

12 These are not dots that the Government is attempting
13 to throw on a piece of paper and connect. The dots were
14 connected directly by the Defendant with his own writings.
15 The silencers are not gun collector items. They are pure
16 killing devices, and they were used by the Defendant.

17 The internal baffles of the assembled silencer was
18 covered in gun powder residue, and this isn't just for some
19 hunting or going to the range or something. He bought them in
20 July of 2017 when he moved to a basement apartment in
21 Maryland. He bought the metal components for it. He bought
22 the drill press. These are not serialized. These are not
23 registered in any way. They intended to be hidden. He made
24 them.

25 The Defense also spoke of a photograph, and I have

feb

30

1 handed a collection of photographs up to the Court. I believe
2 there are 11 of them. I am going to just mark them all as
3 Government's Exhibit 1.

4 THE COURT: Okay.

5 (The photographs referred to
6 were marked for identification
7 as Government's Exhibit 1.)

8 MR. WINDOM: This was shown at the last detention
9 hearing. The silencers are actually visible; a completed
10 silencer and some of the silencer components over here. But I
11 want to step back and show how the Defendant actually had
12 these items in his apartment. He had these ready to go.
13 Ready for use.

14 The second photograph is a photograph of the
15 Defendant's apartment bedroom. It is the foot of the bed and
16 there are three closets there. The one on the left, when
17 opened, reveals the third photograph that Your Honor has, and
18 I will show some closeups of this in a moment. But the two
19 standing long guns on the bottom, a bunch of ammunition,
20 tackle bags, load carrying bags, ammunition belts. There were
21 some handguns, knives and solvents in here.

22 So open the closet and begin. Pick up your long
23 guns, which are specialized by himself. There are optics on
24 there that he has placed on them. He has customized these
25 devices with individual pieces of equipment that he bought

feb

31

1 over time.

2 Take the long guns out. There is your thousands of
3 rounds of ammunition in canisters. There is your ammunition
4 belts. There is your load carrying vests. Just above that an
5 outfit further, a couple of handguns, a knife.

6 In the closet next to this one is the body armor,
7 and I want to talk about the body armor for a minute. This
8 isn't like a Kevlar vest. It is body armor. It is designed
9 to take, on impact, multiple rifle rounds from 30 feet.

10 You see the magazines, also ready to be loaded.
11 Here are -- here is the armor pulled out of the vest. This is
12 just one of the vests. The weight alone -- and I am happy to
13 hand it up to Your Honor to test it. This is combat gear.
14 There is no reason to have this except for the purpose that
15 the Government has said in its motions; that the Defendant
16 intended to take this equipment, to take his weapons, and go
17 and conduct the attacks that were planned.

18 Further ammunition belts; interior. Back in the
19 original closet with the long guns you have got a go bag with
20 anything that you need for the road, including your silencers.
21 And there is the drill press.

22 So in addition to those guns, the Defendant also
23 repeatedly searched over the years for homemade explosives,
24 homemade mortars, high impact weapons, which makes sense
25 because, in his own words, as we quoted in ECF No. 9, he was

feb

32

1 "dreaming of a way to kill almost every last person on the
2 earth." It involved a bombing and sniper campaign.

3 And there is no daylight between the Government's
4 statements that he wants to kill a lot of people and he also
5 had a silencer. You can kill lots of people quietly. That is
6 kind of the point of the silencer, is to get away with it.

7 The Defendant said, he wrote, that he believed that
8 much blood will have to be spilled to get whitey off the
9 couch. He was just the man to do it in his mind. These are
10 not -- well, they were at the time private thoughts written
11 privately, but so were Anders Breivik's and so were the guy in
12 New Zealand who conducted the attacks. They were private
13 thoughts written privately, until they acted and until they
14 published.

15 Now the second factor for Your Honor involves the
16 weight of the evidence, and as charged, simply with the
17 charges in the indictment, it is a search warrant case. It is
18 extremely strong evidence, as Your Honor found the last time
19 around.

20 These are guns that he bought personally. In many
21 instances, kept feet from where he lays his head at night.
22 There are the repeated admissions on phone calls he has made
23 while detained that the Government put in its filing from the
24 other day. And as the Defense just noted, he had Tramadol in
25 his blood when the Government took that blood draw on the date

feb

33

1 of his arrest, on February 15th of this year.

2 I have put in much of each of the factors in the
3 different writings, and there is no need to go over those
4 again. So I am kind of adding a little bit more discussion of
5 this.

6 With respect to the history and characteristics of
7 the Defendant, the Defendant's 30 years in the service mean
8 nothing because he turned on his country. He turned on the
9 beliefs and the ideals of his country over the last several
10 years.

11 And he has been 40 years a skinhead. He called
12 himself in his letter a longtime white nationalist. The
13 reason that the Government put in the information regarding
14 Missouri in the filing from the other day is that it
15 corroborates everything that the Defendant said.

16 The Defendant and a couple of other skinheads were
17 driving around in eastern Virginia in 1995 and one of them
18 pulled a gun on an individual and was later convicted of
19 attempted murder. So the point of that information is simply
20 to corroborate what the Defendant himself said, which is also,
21 of course, corroborated by all of the different internet
22 searches that the Government has put into its brief.

23 Now in terms of the nature and seriousness of the
24 danger to the community, as the Government has stated several
25 times, the Defendant wanted to kill on a mass scale. He

feb

34

1 wanted to spark internal strife, and he named the types of
2 people that he wanted to kill in his letter: Politicians,
3 judges, leftists in general, which are almost verbatim words
4 from Breivik, and we put some of this in the latest filing.

5 So on February 26 of 2018, just by way of an
6 example, while at work he conducts an internet search for "Are
7 Supreme Court justices protected?" Two weeks later, it is a
8 Tuesday, March 13 of 2018, maybe he was at work that day. He
9 comes home, gets cleaned up, starts surfing the internet, but
10 not out of some sort of idle curiosity, given the specificity
11 of his searches.

12 At 5:15, for a half hour he does many dozens of
13 searches on AR-15s, and then he turns his attention to the
14 Supreme Court justices, who he just has presumably found out
15 are not protected on the scale that many other constitutional
16 officers are.

17 So at 5:50, "How often does the U.S. Supreme Court
18 meet?" At 5:51 p.m., "U.S. Supreme Court justices, liberal or
19 conservative." At 5:55 p.m., "Where does Justice, blank,
20 live?" At 5:55 p.m. also, a justice goes house hunting
21 articles. At 5:59 p.m., another article regarding a
22 particular justice.

23 At 6:01 p.m., another article regarding a particular
24 justice; 6:01 p.m., again another article regarding where that
25 justice has been spotted dining. At 6:02 p.m., a search of

feb

35

1 the location, the locality, where that previous article had
2 said the justice had been spotted dining.

3 At 6:04 p.m., a search for justice number two. Also
4 at 6:04 p.m., another search for that same justice. At 6:07
5 p.m., where does justice number two live? Also at 6:07 p.m.,
6 an article regarding the specific locality, neighborhood, in
7 which that justice number two lived. And then he is back to
8 the firearms. 6:38 p.m., a firearm blog, and continues
9 throughout the night.

10 Now it is important to note that from the -- as well
11 in terms of the nature of the danger to the community, from
12 the various search warrants that were done in this case, in
13 emails the Defendant sent a few photographs of different long
14 guns. Two of the long guns in pictures that were taken by the
15 Defendant in his residence during the course of the email
16 search warrant, so in the 2017/2018 time period, two of those
17 guns have not been found by the Government. They were not
18 present at his home when the Government searched on February
19 15 of 2019.

20 So one plausible possibility is that he still would
21 have access to those weapons wherever they may be, whether at
22 the home he owns in North Carolina or at some other location,
23 a location consistent with everything that Breivik said about
24 having multiple stash locations.

25 Now I am just going to briefly discuss the few cases

feb

36

1 that the Defense put in last night. We can't possibly know
2 every fact that was laid out in the detention hearing or even
3 if there was a detention hearing in some of those cases. Or
4 in two of those cases.

5 But the larger picture, you know, is we also could
6 go back and search and find any number of things, but these
7 are not comparable. They are in *absit* because here the
8 Defendant wasn't calling somebody from a couple of thousand
9 miles from the comfort of his house spouting off. He was
10 planning a strike, and he was going to strike when ready
11 without advanced warning.

12 And that is not me telling you. That is the
13 Defendant telling you; writing it down and then the Government
14 finding it later. He said so himself. The silencers proved
15 that. And he said he was a man of action, and that was his
16 ultimate intention.

17 Now with respect to Breivik, I mean, we have talked
18 about that in different papers. Your Honor has signed a
19 search warrant that the Defense has on this case which goes
20 through many different ways in which the Defendant was
21 following the manifesto. From the research phase, the
22 logistics phase, assembly and implementation. Basically, how
23 to do it and on whom. Well, we know he was doing that.

24 The equipment for use: The guns, the armor, the
25 ammunition, the food, the survival supplies, all of those

feb

37

1 things which he had. The assembly of the equipment: For
2 example, drilling out a silencer and then using it, and then
3 all of the different optics and customizations on the firearms
4 that he did himself. And so that is the third step.

5 And the fourth step is implementation, and it is
6 before that step that the Government has intervened with the
7 arrest of the Defendant.

8 Now one other thing for Your Honor to consider is,
9 well, what would be a reasonable accommodation otherwise if he
10 were to be released from custody? Well, there is no
11 reasonable alternative. There is no viable third party
12 custodian. Arizona gives zero comfort.

13 How is the Defendant going to get there? How is the
14 Defendant going to be monitored there by this Court or by
15 Pretrial out there, when the brother who is so busy -- an
16 unblemished record. I am not casting aspersions on the
17 brother, as far as has been represented to the Court. But he
18 is so busy with his work he can't show up here, and he says he
19 works 8:00 a.m. to 5:00 p.m. What is he going to do? What is
20 the Defendant going to do all day alone in his brother's
21 house?

22 But, in any event, the Defendant isn't qualified for
23 release. We noted previously in the last hearing his ability
24 to defeat controls. Specifically, with respect to searches on
25 the work computer. Obviously he also was able to purchase

feb

38

1 illegal drugs from overseas using encrypted foreign email
2 accounts, foreign based email accounts.

3 Attempting to subvert internal testing at the Coast
4 Guard with synthetic urine has been previously discussed. And
5 he hid his criminal conduct from those around him, including
6 from the very brother that is put up as a third party
7 custodian. He hid that drug use for years from his brother.

8 So for those reasons, Your Honor, we maintain,
9 consistent with Pretrial, that the Defendant must be detained.
10 I am happy to answer any questions.

11 THE COURT: No questions. Thank you.

12 I will give the Defense a final opportunity since
13 this is your request.

14 MS. OYER: Your Honor, I will be very brief. I want
15 to just respond to a couple of points.

16 Mr. Windom talked about how this is a very strong
17 case because there were search warrants issued. The search
18 warrants did not yield charges that reflect any of the
19 offenses that were under investigation in the search warrants.
20 The search warrants stated that the Government was
21 investigating murder, attempted murder, conspiracy to commit
22 murder.

23 There are no murder charges here. We are many steps
24 away from a murder charge being appropriate, and I think that
25 the fact that the only charges are essentially these firearm

feb

39

1 offenses and this drug possession offense is something that
2 ought to give the Court serious pause about how strong this
3 case against Lieutenant Hasson actually is.

4 Your Honor, the other point I want to make is
5 Mr. Windom talked about these searches related to Supreme
6 Court justices. The Government had eyes on Lieutenant Hasson
7 for months. They had a tracking device on his car. They had
8 tracking on his cell phone.

9 If there were any evidence that he had gone near any
10 of those locations, Your Honor would have heard about it from
11 the Government. We all would have heard about it from the
12 Government. There is no evidence to suggest that he was
13 actively pursuing any of those individuals as targets, and the
14 fact that he did not go anywhere near those locations after
15 searches for them is very strong evidence that in fact he was
16 not.

17 We still have not heard any details from the
18 Government about what this supposed plan was. What was he
19 planning? The Government apparently believes he was planning
20 something, but their belief, that they have not come forward
21 with evidence to support, is not sufficient to detain
22 Lieutenant Hasson.

23 The Bail Reform Act puts great weight on what the
24 actual charges are, and the charges in this case are not
25 murder, not attempted murder of Supreme Court justices. They

feb

40

1 are not domestic terrorism.

2 They are violations of a provision of the National
3 Firearms Act that the ATF and some of its top officials are
4 considering as possibly obsolete, and they are a misdemeanor
5 drug possession offense and they are the offense of possessing
6 a firearm while using a controlled substance. In this case, a
7 Schedule 4 narcotic.

8 Those charges, evaluated against Lieutenant Hasson's
9 record, do not merit detention in this case, Your Honor.

10 THE COURT: Thank you. Give me a moment. Let me
11 review my notes.

12 (Long pause)

13 THE COURT: As part two of the detention process,
14 this hearing is really about what has happened since the
15 initial order of detention. My reasoning was set forth there.
16 And the question that was in that hearing, as well as in this,
17 is to what extent should uncharged activity influence the
18 Court's detention question as it relates to charged conduct.

19 Looking at my notes from the prior hearing, the
20 needle hasn't moved much at all. The findings that I made
21 there I think are still consistent here. The nature of the
22 circumstances of the offense charged, especially if it is
23 certain types of offenses, that one weighed in favor of the
24 accused.

25 The weight of the evidence as to what is charged,

feb

41

1 that weights in favor of the Government. And all of the other
2 subcategories that I have spoke to, in terms of family ties
3 and employment and history of drug use and criminal history
4 and conduct while under supervision and the seriousness of
5 danger to the community, is still the same.

6 The only thing that is different now is that there
7 is a more fulsome record as to what is or what will be
8 charged, and that really hasn't changed either.

9 The Defendant is not charged with any terrorist
10 activity, and either there is not enough evidence to charge
11 him or the Government has no interest in charging him, or
12 maybe there was a lack of a showing of probable cause to
13 charge him with something else. But clearly, as we sit here
14 now, there is no intent by the Government to charge with
15 Mr. Hasson with anything other than what is in the indictment.

16 There are no allegations of attempted criminal
17 conduct above and beyond what is in the indictment. There is
18 no allegation of a conspiracy to do so. Mr. Hasson will never
19 be convicted of anything remotely close to terrorism or murder
20 because there are no charges, not even so much as a stalking
21 charge, be it a stalking of a Supreme Court justice.

22 And I mean no disrespect to the Government or law
23 enforcement. They were faced with a very difficult
24 challenging set of facts. If I were a law enforcement
25 officer, I probably would have moved, if not when they did,

feb

42

1 maybe even sooner, based upon the information that has been
2 presented.

3 But the Defendant's status as a skinhead is of no
4 moment in the American court, or his longstanding views,
5 hatred or otherwise, regarding anybody. It is about the acts
6 or those acts taken in preparation to conduct amounting to
7 criminal conduct.

8 The difficulty, I suspect, for the law enforcement
9 officers here was when to move. In thinking about this it is
10 pretty easy for all of us to say, well, let's wait until he
11 has got a gun drawn on someone and take him out. As the
12 Defense would say, in the movies. That may not be very smart.
13 But clearly, that scenario makes it easy to make the case that
14 there is an attempt to do x, y or z.

15 But how far back from that is where we must
16 struggle, and in that space, that is where I had pause before
17 and I have pause now, in terms of how much is enough. And as
18 of the last hearing, I was persuaded that there was enough to
19 not only to detain him, but for the Government to have
20 evidence to prosecute him for these most vile crimes that have
21 been argued. That discussion has been taken off the table.

22 Whether he sits here with criminal ideas while
23 charged with firearm possession charges or whether charged
24 with shoplifting charges, the detention question is still the
25 same. How much of a shadow should be cast upon the issue of

feb

43

1 detention when he is faced with shoplifting?

2 Well, this is more serious. The allegations against
3 the accused are serious even as they sit. His exposure is
4 significant, as the Government has said, but on this record I
5 do not find that detention is appropriate.

6 A more difficult question for the Defense is
7 conditions, if any, of release. He is entitled to be
8 released, and your starting points were very good. I also
9 agree with the Government. Arizona is not in play. And just
10 returning him to that home under the conditions in which he
11 was arrested, that is not enough.

12 He is going to have to have a whole lot of
13 supervision. I don't want to use terms such as being shackled
14 to someone that the Court finds comfort in, but he might feel
15 that way. I have got to have somebody who has got eyes and
16 ears on him like nobody's business.

17 Now, of course, we are talking about home detention,
18 we are talking about third party custodians, we are talking
19 about no computer use, we are talking about no firearms and
20 anything else that sounds reasonable, be it from the
21 Government or from the Defense.

22 And I don't know how you wish to approach this, if
23 you have someone in mind at the moment, but him just going
24 home with the wife and kids will not suffice. So I will be
25 glad to hear from the Defense first.

feb

44

1 MS. OYER: Your Honor, I have a couple of different
2 proposals, anticipating that going home with his wife might
3 not be considered a suitable option by the Court, although she
4 is present in court today and, of course, willing to take him
5 home with her.

6 THE COURT: And let me be careful. I don't mean to
7 cast any negative comments upon his wife or family. But I am
8 also not so warm about him going back to that home. I am
9 concerned about the breadth of weaponry in that home.

10 While the Government has searched it, I am so
11 concerned about the facts or the contentions made by the
12 Government that I don't know what else may be in that home and
13 whether the Government would ever find such things. So you
14 can take it from there.

15 MS. OYER: Well, Your Honor, Mrs. Hasson, who is
16 present today, is no longer living in the home where the
17 search warrant was executed. That was a rental, and the
18 Hassons are no longer tenants there.

19 She is living in the Virginia Beach area with her
20 mother. So that would be one option. I know that Your Honor
21 was not comfortable with Arizona. Mr. Windom raised the point
22 that Mr. Hasson's brother has a full-time job.

23 His parents have also been screened as third party
24 custodians. They are also in Arizona, but they are not
25 working and home during the day and also willing and able to

feb

45

1 supervise him. So that would be another option that I would
2 ask the Court to consider.

3 And short of that, Your Honor, I think another
4 suitable option could be to place Mr. Hasson in an inpatient
5 residential drug treatment facility. There is a substance
6 abuse issue here. Many clients of mine in other cases have
7 done well in the inpatient program at Gaudenzia. There are
8 also other inpatient programs, I believe, that Pretrial
9 contracts with. So that would be another option that I would
10 set forth to the Court.

11 I don't know that that would accommodate location
12 monitoring. So perhaps it wouldn't address the Court's
13 concerns in every respect.

14 THE COURT: Well, I want to make as clear as
15 possible, while I do not accept the Government's argument with
16 respect to his dangerousness, his level of dangerousness that
17 amounts to detention, I still have grave concerns. And many
18 of the treatment programs that we have don't provide me the
19 level of comfort about his movements and the ability to walk
20 away and things of that nature.

21 MS. OYER: Understood, Your Honor.

22 THE COURT: Okay.

23 MS. OYER: Then I suppose I would focus on the
24 option of Lieutenant Hasson staying with his parents, who
25 would be in a position to supervise him essentially around the

feb

46

1 clock. And I think it would be possible to get the family on
2 the phone now if the Court wanted to do that, to talk with
3 them about what the logistics of the accommodations would be.

4 THE COURT: I am not inclined to engage in a
5 telephone conversation on this subject. I am not exactly
6 warmed over about the notion of Virginia, but I will not rule
7 it out. And I also, of course, will -- I am looking at all
8 kinds of things that can maintain the status quo until this
9 matter is resolved.

10 And I don't know if there are any properties that
11 are available for posting, to the extent that the persons who
12 owns those properties have such a relationship with the
13 accused that he would stay on the straight and narrow.

14 MS. OYER: Understood, Your Honor. It sounds like
15 perhaps the best option would be for us to reconvene in a few
16 days, and I could present a more concrete proposal in advance
17 of a further hearing to both the Court and the Government, as
18 well as to Pretrial, so that they can weigh in on it as well.

19 THE COURT: I think that is a good proposal. I
20 Would urge you to consider three different options, because I
21 don't want us to spend time looking at just one, in case I am
22 not persuaded it is the right one.

23 I also would require you, when you get some kind of
24 finality of these options, be they two, be they three,
25 whatever, give a head's up to the Government, because I want

feb

47

1 them to have a fair opportunity to argue that this one is
2 better or none of them are better and here is why.

3 But I don't want a hearing by ambush, not that you
4 would do so intentionally.

5 MS. OYER: Understood, Your Honor. I would like to
6 ask the Court. I believe that some of the family in Arizona
7 would be able to fly out, if the Court would consider that as
8 an option. I don't want to ask Lieutenant Hasson's parents to
9 fly out if the Court is categorically opposed to him going to
10 their custody.

11 But I believe that they would do that if it is
12 something that would assist the Court in making a
13 determination of whether that is appropriate.

14 THE COURT: I am opposed to Arizona.

15 MS. OYER: Okay.

16 THE COURT: Virginia, not as opposed.

17 MS. OYER: Okay. Understood.

18 THE COURT: And I am sure there are different judges
19 who would feel differently about it, but you are stuck with me
20 today and that is the marker of my degree of comfort at this
21 hour. I have some reservations.

22 But let me hear from the Government, and I will give
23 you a further opportunity if you wish. Anything further from
24 the Government?

25 MR. WINDOM: No, sir. I guess, just to emphasize

feb

48

1 what you said a moment ago, if we can have maybe like two
2 days, or something like that, in advance of whatever hearing,
3 whatever options the Defense comes up with; presented to us so
4 that we can also come up with reasonable arguments, which I
5 will tell you right now we are going to oppose all of those
6 grounds.

7 THE COURT: Understood. And I think that is a fair
8 comment. Two days notice should be sufficient. So whenever
9 you wish to have a hearing, whenever you have made the
10 necessary arrangements, you can contact chambers or file a
11 motion and we can schedule something then.

12 MS. OYER: Thank you, Your Honor.

13 THE COURT: Thank you. Anything further from the
14 Government?

15 MR. WINDOM: No, sir. Thank you.

16 THE COURT: Thank you. Anything further from the
17 Defense?

18 MS. OYER: No, Your Honor. Thank you.

19 THE COURT: Thank you all. I wish you well.

20 THE CLERK: All rise. This Honorable Court now
21 stands adjourned.

22 (Whereupon, at 3:09 p.m., the hearing was concluded.)

23

24

25

feb

49

C E R T I F I C A T E

I hereby certify that the foregoing is a correct transcript from the duplicated electronic sound recording of the proceedings in the above-entitled matter.

Fabiana Barham 05-01-19

Fabiana E. Barham

Date

Certified Transcriber

Certification No.: CET**213